IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

MONDAY, THE 19TH FEBRUARY 2007 / 30TH MAGHA 1928

WP(C).No. 30816 of 2003(R)

PETITIONERS:

1. BHARAT SANCHAR NIGAM LIMITED, (THROUGH CHAIRMAN CUM MANAGING DIRECTOR) CORPORATE OFFICE, SANCHAR BHAVAN,20, ASHOKA ROAD, NEW DELHI 110001

2. BHARAT SANCHAR NIGAM LIMITED. (THROUGH THE CHIEF GENERAL MANAGER TELECOM) KERALA TELECOM CIRCLE, TRIVANDRUM 695 033

BY ADV. SRI.P.K.RAMKUMAR, ADDL.CGSC
SRI.S.K.BALACHANDRAN, SC, BSNL

RESPONDENTS:

1. THE CHIEF COMMISSIONMER FOR PERSONS WITH DISABILITIES, G-31, SECTOR-39, NOIDA, UTTAR PRADESH 201 301.

2. G.SARVOTHAMAN, SENIOR SECTION SUPERVISOR (RETIRED) OFFICE OF THE CHIEF GENERAL MANAGER TELECOM, BSNL, KERALA CIRCLE, TRIVANDRUM-695033, RESIDING AT DASRATHY TC-1/897, NO.18, MOSQUE LANE KUMARAPURAM, MEDICAL COLLEGE P.O., TRIVANDRUM

R1 BY ADV. SRI.SAJEESH.K.B., ADDL.CGSC
R2 BY ADV.SRI.G.SASIDHARAN CHEMPAZHANTHIYIL
SRI.S.VISHNU
SRI.MANOJ RAMASWAMY
VIVEEJA RAVEENDRAN
SRI.S.R.AJITH, ADDL.CGSC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1 TRUE COPY OF THE JUDGMENT AND ORDER IN CASE NO.1109 OF 2001 DATED 26.12.2002.

EXT.P2 TRUE COPY OF THE COMPLAINT FILED BY 2ND RESPONDENT BEFORE THE HON'BLE COMMISSIONER FOR PERSONS WITH DISABILITIES.

EXT.P3 TRUE COPY OF THE REPLY STATEMENT FILED BY THE PETITIONERS BEFORE THE CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES IN CASE NO.1109/2001.

RESPONDENTS' EXHIBITS:

EXT.R2(a) TRUE COPY OF THE O.M.NO.36035/8/89-EST(SCT) DATED 20.11.1989 ISSUED BY THE GOVT. OF INDIA, MINISTRY OF PERSONNEL.

EXT.R2(b) TRUE COPY OF THE GMT LETTER NO.10/90-507/84 DATED 27.5.1985.

EXT.R2(c) TRUE COPY OF LETTER NO.27-4/87-TE.II DATED 9.9.1992

EXT.R2(d) TRUE COPY OF LETTER NO.ST/43-94/92 DATED 30.12.1992

EXT.R2(e) TRUE COPY OF THE ORDER NO.ST/43-24/6 DATED 15.7.1983 ISSUED BY THE SECOND RESPONDENT.

EXT.R2(f) TRUE COPY OF THE ORDER DATED 11.3.1993 IN O.A.NO.1587/91 OF THE CAT, ERNAKULAM BENCH.

EXT.R2(g) TRUE COPY OF THE NOTIFICATION NO.16-25/99/NI-I DATED 31.5.2001 ISSUED BY THE MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT, GOVERNMENT OF INDIA.

//TRUE COPY//

ahz/

KURIAN JOSEPH, J.

W.P.(C) NO.30816 OF 2003 R

Dated this the 19th day of February,2007

JUDGMENT

Whether the Chief Commissioner appointed under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act is entitled to issue directions to identify the posts in a cadre is the question to be considered in this case.

2. Ext.P1 order passed by the Chief Commissioner under The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter called as `the Act') is under challenge. The second respondent complained about denial of the eligible benefits under the Act. On examination of the complaint, the Chief Commissioner issued two directions: (1) To regularise the promotion of the complainant as U.D. Clerk with effect from 1.6.1977 and to consider him for promotion as LSG with effect from 20.11.1989. (2) To treat the restructured TOA cadre as one for reservation for the

physically handicapped persons.

3. It is the contention of Sri.Balachandran, learned counsel appearing for BSNL, that regularisation of promotion and identification of eligible posts in a cadre are not within the competence of the Chief Commissioner under the Act. Sri.Vishnu, on the other hand, submits that the Chief Commissioner acted well within his jurisdiction in exercise of his powers under Section 59 of the Act in issuing the directions.

4. In order to properly appreciate the contentions taken by the parties it is necessary to refer to the minimum facts. The second respondent was initially appointed as Lower Division Clerk on 27.1.1973. He started working as U.D. Clerk with effect from 1.6.1977. According to BSNL, regularisation in that post was with effect from 4.11.1992, but according to the second respondent, on the basis of Ext.R2(e), with effect from 1.3.1982. Since Ext.R2(e) is the order confirming the second

respondent as U.D.Clerk with effect from 1.3.1982, there can be no dispute on that date. There was restructuring of LDC/UDC/OS posts to that of TOA Grade I, II, III and IV with effect from 9.9.1992. The employees were given option for the restructured cadre. The second respondent exercised the option to go over to the restructured cadre with effect from 9.9.1992. Accordingly, he was granted TOA Grade II on 9.9.1992 and TOA Grade III with effect from 1.7.1999.

5. The contention of the second respondent is that even assuming that the Chief Commissioner was not entitled to regularise him in the UDC cadre with effect from 1977, since based on Ext.R2(e) the second respondent has completed ten years of service as UD Clerk on 1.3.1992, he is to be granted LSG cadre with effect from that date. Then the question is whether there was a vacancy available. That there was a vacancy in the post of LSG with effect from 20.11.1989 cannot be disputed, in view of the stand taken by BSNL itself before the Chief Commissioner that

K.Krishnankutty, who was holding the post of LSG, was not appointed under the physically handicapped quota. Thus, there was a post available in the cadre of LSG reserved to the physically handicapped persons as on 20.11.1989. Since there was no other claimant, in any case, the second respondent has to be considered for promotion as LSG with effect from the date of completion of ten years as UDC, before restructuring. Inorder to avoid any further confusion or dispute on this aspect, it is declared that second respondent shall be treated to have been appointed to the cadre of LSG with effect from 1.3.1992.

6. The remaining question is whether TOA cadre can be identified for the purpose of reservation to the physically handicapped persons and whether the Chief Commissioner is entitled to issue appropriate directions. In order to fully appreciate the question it is necessary to refer to the very purpose of the Act. The legislation was introduced with the following objects:

"(i) to spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training employment and rehabilitation of persons with disabilities;

(ii) to create barrier free environment for persons with disabilities;

(iii) to remove any discrimination against persons with disabilities in the sharing of development benefits, vis-a-vis, non-disabled persons;

(iv) to counteract any situation of the abuse and the exploitation of persons with disabilities;

(v) to lay down a strategies for comprehensive development of programmes and services and equalisation of opportunities for persons with disabilities; and

(vi) to make special provision for the integration of persons with disabilities into the social mainstream."

In the Statement of Objects and Reasons, it is further stated that:

"2. Accordingly, it is proposed to provide inter alia for the constitution of Coordination Committee and Executive Committees at the Central and State levels to carry out the various functions assigned to them. Within the limits of their economic capacity and development the

appropriate Governments and the local authorities will have to undertake various measures for the prevention and early detection of disabilities, creation of barrier free environment, provision for rehabilitation services, etc. The Bill also provides for education, employment and vocational training, reservation in identified posts, research and manpower development, establishment of homes for persons with severe disabilities, etc. For effective implementation of the provisions of the Bill, appointment of the Chief Commissioner for persons with disabilities at the Central level and Commissioner for persons with disabilities at the State level clothed with powers to monitor the funds disbursed by the Central and State Governments and also to take steps to safeguard the rights of the persons with disabilities is also envisaged."

Section 59 of the Act reads as follows:

"**59. Chief Commissioner to look into complaints with respect to deprivation of rights of persons with disabilities**:- Without prejudice to the provisions of section 58 the Chief Commissioner may of his own motion or on the application of any aggrieved person or otherwise look into complaints with respect to matters relating to --

(a) deprivation of rights of persons with disabilities;

(b) non-implementation of law, rules, bye-laws, regulations, executive orders, guidelines or instructions made or issued by the appropriate Governments and the local authorities for the welfare and protection of rights of persons with disabilities,

and take up the matter with the appropriate authorities."

The statutory provision in the background of the Act would clearly show that the Chief Commissioner is entitled to look into the grievances regarding deprivation of rights of persons with disabilities and non-implementation of laws, rules, bye-laws, regulations, executive orders and departmental instructions for the welfare and protection of rights of persons with disabilities. Therefore, the Chief Commissioner cannot be faulted in having embarked upon an enquiry as to whether there was deprivation of rights of persons with disabilities on the restructuring of the LDC, UDC cadre to that of Telecom Operating Assistant. In the process, the Chief Commissioner found that by mere conversion of LDC, UDC, OS to that of TOA, there is no change in the job description and functions attached to the re-structured rules. Yet, the Chief Commissioner observed that:

> "If the jobs under TOA cadre are in Group 'C' and the concerned TOAs still have to do the jobs that were done by erstwhile LDC, UDC, OS and other similar posts, there is no reason for not

> identifying these for PWDs and not providing reservation in promotion to PH persons in this cadre."

It was in such circumstances, a direction was issued to BSNL to include the TOA cadre which is required to do clerical work and such other jobs in the list of identified jobs. Thereafter, BSNL was directed to prepare a reservation register for physically handicapped persons under the existing instructions and to consider the claim of the second respondent for promotion under the reserved vacancies for the various grades under TOA, subject ofcourse, to the condition that the second respondent is otherwise eligible. The directions issued by the Chief Commissioner in that regard are only in implementation of the scheme and purpose of the Act to give full participation and equality of opportunity to the people with disabilities. It is the statutory duty of the Chief Commissioner to take all necessary steps to promote the welfare and protect the rights of the physically challenged persons. On the mere restructuring of an establishment and on assigning a different

nomenclature, in case there is no change in the nature of discharge of duties, the restructured/redesignated cadre should continue as such for the purposes of reservation for the persons with disabilities. In the instant case the Commissioner found that the LDC/UDC/SO continued to discharge the same clerical duties even after restructuring the cadre as TOA. The Commissioner is thus justified in issuing the direction to consider the case of the petitioner against jobs in the TOA cadre which were formerly discharged by LDC, UDC, OS etc. The Writ Petition is hence dismissed subject ofcourse to the modification of Ext.P1 order regarding the benefit of LSG cadre which is to be only from 1.3.1992.

(KURIAN JOSEPH)
Judge

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